DATO' MAK KOK & ANOR.

v.

SEE KENG LEONG & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[CIVIL SUIT NO. D4-22-186-88]
30 MAY 1989

COMPANY LAW: *Directors - Powers and rights - Whether director as chairman may adjourn an Extraordinary General Meeting sine die - Whether acts done thereafter are invalid - Whether appointment of new directors contravene s. 18A of the Insurance Act - Lifting of the corporate veil.*

The defendants applied to set aside the plaintiffs' order granted *ex parte* on 7 September 1988 and also prayed that the plaintiffs be restrained from acting as directors of the 10th defendant and also to deliver all movable and immovable properties of the 10th defendant.

The plaintiffs say they are directors of Pan Global Equities Bhd. i.e., the 10th defendant and owns 99.92% of all issued capital in Pan Global Insurance Sdn. Bhd. The plaintiffs were at all material times, directors of Pan Global Insurance. The 9th defendant is a wholly owned subsidiary of one KUBB and also the registered holders of RM1,000,000 ordinary shares in the 10th defendant.

By a notice dated 3 August 1988, the 4th and 9th defendants requisitioned an Extraordinary General Meeting (EGM) of the 10th defendants to consider resolutions for the removal of the plaintiffs as directors of the 10th defendant and to appoint in their stead the 1st to fifth defendants as directors. The 10th defendant was notified as to the proposal to elect new directors.

Earlier there were disputes over the ownership and rights in respect of the 10,000,000 shares in the 10th defendant. Following that, there were 2 injunctions issued against KUBB restraining KUBB from doing certain rights in respect of the said 10,000,000 shares.

The EGM was duly convened on 5 September 1988. The 3rd plaintiff assumed the chair without objection and went on to adjourn the meeting *sine die* at his own accord on the grounds that there were three Court orders served on the 10th defendant and there will be contravention of s. 18A of the Insurance Act 1963. Subsequently, the plaintiffs left the meeting with some shareholders. However, the requisitionists and the other remaining shareholders remained behind and continued with the meeting and appointed the 1st defendant as chairman. At this meeting, the resolutions were passed whereby the 1st to 5th defendants were elected as directors. The 6th to 8th defendants were elected also at a later board of directors' meeting. The question is whether the 3rd plaintiff was right in adjourning the EGM and in rejecting the proposal to elect the new directors.

Held:

[1] Under Article 69 of the 10th defendant's articles of association, the 3rd plaintiff as chairman of the EGM did not have the power to adjourn the meeting as he did. There is no evidence that the meeting consented to the adjournment or that the meeting directed him to adjourn the EGM *sine die*. The 3rd plaintiff admitted he adjourned the meeting *sine dine* on his own accord. In the circumstances, the 3rd plaintiff had acted in contravention of Article 69 and the adjournment was therefore not a valid adjournment.

[2] Even at common law the chairman has no power to stop or adjourn the meeting of shareholders of a company at his own will and pleasure. *National Dwellings Society v. Sykes.* The chairman can only adjourn the meeting if the members present so wish or consent. The chairman however possesses an inherent power to adjourn for disorder, for such a period as may be reasonably necessary to restore order.

[3] The three Court orders did not restrain the 10th defendant from holding its EGM. Therefore the 3rd defendant was not justified in adjourning the meeting on his own accord. If he was so concerned that the 10th defendant and its officer would be exposed to contempt proceedings, he should get the consent of the meeting to adjourn the meeting, or if he could not get the consent, he should have vacated the chair and let someone else take over as chairman of the meeting.

[4] Section 18A provides that approval must be obtained from the Director General before any change in the control of any Malaysian insurer. There is no contravention of s. 18A because, the EGM was a meeting of the shareholders of the 10th defendant. The proposed resolutions to remove the plaintiffs as directors and to replace them with new directors did not affect the powers of the plaintiffs as directors of Pan Global Insurance. Although the 10th defendant owns 99.92% of all the issued share capital in Pan Global Insurance, the 10th defendant cannot interfere with the powers of the directors to control the affairs of Pan Global Insurance as they are treated as a separate entity altogether.

[5] From the newspaper report exhibited by the 3rd plaintiff's affidavit, it is evident that the Director-General of Insurance had publicly taken the position that s. 18A applied. Nevertheless, the said affidavit did not comply with O. 41 r. 5 of the Rules of the High Court 1980 as the paragraph does not contain facts the plaintiff was able of his own knowledge to prove. Therefore the paragraph and the opinion expressed in the newspaper exhibited is inadmissible for the purpose of the present proceedings. *Gleeson v. J. Wippell & Co. Ltd.*

[6] Distinguishing *Lorrain Osman's* case, the Court found that there is no evidence to justify the lifting of the corporate veil in the present case as there was no breach of fiduciary duty as director nor any allegation of fraud as found in *Lorrain's* case.

[Order accordingly.]

Cases referred to:
National Dwellings Society v. Sykes [1894] Ch 159
John v. Rees & Ors. [1970] Ch 345
Automatic Self-Cleansing Filter Syndicate Co. Ltd. v. Cuninghame [1906] 2 Ch 34
The Gramophone And Typewriter Limited v. Stanley [1908] 2 KB 69
Gleeson v. J. Wippell & Co. Ltd. [1977] 1 WLR 510
Bank Bumiputra Malaysia Bhd. & Anor. v. Lorrain Osman & 5 Ors. [1985] CLJ (Rep) 409
Aspatra Sdn. Bhd. & 21 Ors. v. Bank Bumiputra Malaysia Bhd. & Anor. [1987] CLJ (Rep) 50

Legislation referred to:
Insurance Act 1963, ss. 18A, 18A2
Rules of the High Court 1980, O. 41 r. 5

For the plaintiffs - Sri Ram; M/s. Sri Ram, Zulkifly & Kumar
For the defendant - Loh Siew Cheang; M/s. Cheang & Ariff

JUDGMENT

Zakaria Yatim J:

This is an application by the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth defendants for an order that the order granted *ex parte* on 7 September 1988 at the instance of the plaintiff be set aside and that an enquiry as to damages which the first to ninth defendants might have sustained by reason of the said *ex parte* order be held on a date to be fixed and that damages as may be assessed be paid by the plaintiffs. In the same application the first to ninth defendants apply, in prayer 2, for an order that the first, second and third plaintiffs be restrained by an injunction from acting as or exercising any of the functions or performing any of the duties of directors or officers or in any capacity whatsoever including from holding themselves out whether directly or indirectly as directors or officers or in any other capacity whatsoever of the tenth defendant; and from interfering or attempting to interfere with the management of the affairs and business of the tenth defendant including the exercise and performance by the first to ninth defendants of their functions and duties as directors of the tenth defendant and to surrender and to deliver to the first to ninth defendants all property movable and immovable of the tenth defendant including its records and books of accounts.

The first, second and third plaintiffs say that they are the directors of Pan Global Equities Bhd. which is the tenth defendant. It is not in dispute that Pan Global Equities is a public limited company and its shares are listed on the Kuala Lumpur Stock Exchange. It is also not in dispute that Pan Global Equities is at all material times the owner of 99.92% of all the issued share capital in a private limited company known as Pan Global Insurance Sdn. Bhd. (Pan Global Insurance) which is carrying on the business of a licenced insurer in accordance with the provisions of the Insurance Act 1963. The management and affairs of Pan Global Insurance were at all material times directly or indirectly controlled by Pan Global Equities. The first, second and third plaintiffs are at all material times directors of Pan Global Insurance. The ninth defendant is wholly owned subsidiary of one Kewangan Usaha Bersatu Bhd. (KUBB) which is a duly licenced finance company. At all material times the ninth defendant is a registered shareholder of ten million ordinary shares in Pan Global Equities.

By a notice dated 3 August 1988 the fifth and ninth defendants requisitioned an extraordinary general meeting (the EGM) of Pan Global Equities to be held on 5 September 1988 at 9 a.m. in one of the hotels in Kuala Lumpur. The EGM was requisitioned to consider, *inter alia*, resolutions for the removal of the plaintiffs as directors of Pan Global Equities and to appoint in their stead the first, second, third, fourth and fifth defendants as directors. On 22 August 1988 the ninth defendant served on Pan Global Equities five notices of intention to propose the first, second, third, fourth and fifth defendants for election as directors of Pan Global Equities. No notice however was given with regard to the appointment and the election of the sixth, seventh and eighth defendants as directors of Pan Global Equities. It is common ground that sometime in late July disputes arose between one Hashim and one Metropolitan Sdn. Bhd. on the one hand and KUBB on the other over the ownership and rights in respect of the ten million shares in Pan Global Equities. The disputes are the subject matter of two civil suits namely Civil Suit No. D1-22-149-88 and Civil Suit No. D4-22-164-88. The plaintiffs in the two Suits obtained for each of them an injunction against KUBB restraining KUBB from doing certain rights in respect of the said ten million shares. The ninth defendant was not a party to either suits. The two Court orders were served on Pan Global Equities on 1 August 1988 and 10 August 1988 respectively.

The EGM was duly convened on 5 September 1988. The third plaintiff who claimed to be the chairman of Pan Global Equities assumed the chair at the EGM without objection. During the course of the EGM the third plaintiff was served with an *ex-parte* order dated 3 September 1988 granted by the High Court Kuala Lumpur in Civil Suit No. D2-22-182-88. The *ex parte* order was granted on the application of the ninth defendant. The *ex parte* order restrained Pan Global Equities from rejecting the acceptance of the notice dated 22 August 1988 and from preventing the ninth defendant from attending and voting at the EGM. It is not in dispute that at the EGM the attention of the third plaintiff was drawn to the provision of s. 18A.

It is contended by the plaintiffs in the statement of claim that the third plaintiff as chairman of the EGM that in the face of the three orders of the Court and in view of the provision of s. 18A of the Insurance Act had ruled that the business of the EGM could not be validly and properly transacted and proceeded to adjourn the EGM *sine die*. After the meeting was adjourned the plaintiff together with some shareholders left the meeting room.

The requisitionists and the other remaining shareholders remained behind. They continued with the meeting and appointed one John Chia Sin Tet, the fifth defendant, as chairman. At this meeting the resolutions were passed and the first, second, third, fourth and fifth defendants were elected as directors and the three plaintiffs were removed as directors of Pan Global Equities. Subsequently, the first to fifth defendants convened a meeting of the board of directors and appointed the sixth, seventh and eighth defendants as directors of Pan Global Equities.

Mr. Sri Ram, Counsel for the plaintiffs submitted that the first question was whether the third plaintiff was right in adjourning the EGM and in rejecting the proposal to elect the new directors In para. 10 of the statement of claim the plaintiff stated that the third plaintiff adjourned the EGM *sine die* because of the three Court orders and because of the provisions of s. 18A of the Insurance Act. In para. 11 of the statement of claim the plaintiff averred that the "third plaintiff's ruling and acts in adjourning the EGM *sine die* were proper, valid and lawful in all the circumstances of the case." In para. 20 of the affidavit in support of the *ex parte* application the third plaintiff averred that as chairman of the EGM he had properly and validly adjourned the meeting. He added that after the meeting was adjourned *sine die* all acts done thereafter "including the appointment and removal of directors are improper, unlawful, invalid, wrongful, null and void and of no effect."

Mr. Low Siew Cheang, Counsel for the first to the ninth defendants submitted that the chairman did not possess the power to adjourn or to close the meeting unless the articles of association vest that power in him. According to him, if the adjournment was not effective in law then everything that took place after the adjournment must be held to be valid.

The first question to consider is whether the third plaintiff, as chairman of the EGM was right in adjourning the meeting *sine dine*. Mr. Low Siew Cheang, in support of his submission referred to Article 69 of the articles of association of Pan Global Equities. Article 69 states:

> The Chairman, may, **with the consent of any meeting** at which a quorum is present and shall, **if so directed by the meeting**, adjourn any meeting from time to time...but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting front which the adjournment took place...
> (Emphasis added)

It is clear that under Article 69, the third plaintiff, as chairman of the EGM did not have the power to adjourn the meeting as he did. There is no evidence that the meeting consented to the adjournment and there is no evidence that the meeting directed him to adjourn the EGM

sine die. In his affidavit in support of the *ex parte* application, the third plaintiff admitted that he adjourned the meeting *sine die* on his own accord on the grounds stated by him in the same affidavit. In the circumstances, the third plaintiff had acted in contravention of Article 69 when he adjourned the meeting. The adjournment was therefore not a valid adjournment.

Even at common law the chairman has no power to stop or adjourn the meeting of shareholders of a company at his own will and pleasure. *National Dwellings Society v. Sykes* [1894] Ch 159. He can only adjourn the meeting if the members present so wish or with their consent. See S. Shaw & ED Smith, *The Law of Meetings*, 5th Edn., p. 88; and BA Masodkar, *Law of Companies and Meetings* 1984. The chairman however possesses an inherent power to adjourn for disorder for such a period as may be reasonably necessary to restore order. He cannot adjourn the meeting *sine die*. If he does so, the adjournment is not a valid adjournment. See *John v. Rees & Ors*. [1970] Ch 345.

The third plaintiff in his affidavit in support of the *ex parte* application stated that one of the reasons why he adjourned the meeting was because of the three Court orders. What are these Court orders? The first order was made in Kuala Lumpur High Court Civil Suit No. D1-22-149 of 1988. The order was made on the application of the plaintiff in that Suit, namely Metropolitan Property Holding Sdn. Bhd. In that order the defendant, KUBB was:

> restrained until further order from disposing, selling, entering into any agreement, executing any agreement or doing any other such acts which effect is to dispose or sell or grant proxies to deny the plaintiffs' rights (legal or equitable) to the 2 million Global Equities Berhad shares deposited with the defendants...

The second order is in Kuala Lumpur Civil Suit No. 11-164 of 1988 where the plaintiff was one Haji Abdul Halim Taib and the defendant was KUBB. The order states:

> ...that the defendants, its servants or agents...be restrained until further order from disposing, selling, entering into any agreement, executing any agreement or doing any other such acts which effect is to dispose or sell or grant proxies or to do as other Act(s) so as to deny the plaintiff's rights (legal or equitable) to the 8 million Global Equities Berhad shares deposited with the defendants...

The third order is in Kuala Lumpur Civil Suit No. D4-22-182 of 1988 where the plaintiff is the ninth defendant and the defendant is Pan Global Equities Berhad. The order states that:

> ...the defendant be and is hereby restrained and an injunction be and is hereby granted restraining the defendant whether by itself or by its officers, servants and agent...from rejecting acceptance of the notice served on the defendant on 22 August 1988 pursuant to Article 95 of the articles of association of the defendant **and it is also ordered** that the defendant be and is hereby restrained and an injunction be and hereby granted restraining the defendant whether by itself or its officers, servants/and agents...from preventing, or interfering with, in any manner whatsoever and the right of the plaintiff to attend and to vote at the extraordinary general meeting of the defendant to be held at 9.30 a.m. on 5 September 1988 and to exercise all rights as are conferred upon the plaintiff under the articles of association of the defendant...

It will be noted that these three orders did not restrain Pan Global Equities from holding its EGM on 5 September 1988. Therefore the third plaintiff was not justified in adjourning the meeting on his own accord. In his affidavit he stated that he was concerned that Pan Global Equities or its officers would be exposed to contempt proceedings. If he was so concerned then he should get the consent of the meeting to adjourn the meeting; or if he could not get the consent of the meeting he should have vacated the chair and let someone else take over as chairman of the meeting.

The other reason given by the third defendant for adjourning the meeting was the provision of s. 18A of the Insurance Act.

It is not in dispute that the first, second, and third plaintiffs are at all material times directors of Pan Global Insurance. In his affidavit in support of the *ex parte* application the third defendant averred that as the plaintiffs were the only directors of Pan Global Equities and in view of its relationship with Pan Global Insurance he was of the opinion that the removal of the plaintiffs and the appointment of new directors in Pan Global Equities would contravene the provisions of s. 18A of the Insurance Act.

In view of what the third defendant had stated in his affidavit it is necessary to consider whether the removal of the plaintiffs and the appointment of new directors at the EGM would contravene s. 18A of the Insurance Act. Section 18A states:

> (1) There shall be no change in the control of any Malaysian insurer unless the Director General has given approval in writing for such change.
>
> (2) For the purpose of this section the expression 'control' in relation to a Malayan insurer means the possession directly or indirectly of the power to direct or cause the direction of the management and policy of the insurer.

Under the Act a Malaysian insurer is a company incorporated pursuant to the provisions of the Companies Act 1965, registered as a Malaysian insurer and carrying on insurance business. Pan Global Insurance is a Malaysian insurer for the purpose of the Insurance Act. Pan Global Insurance is a separate entity altogether from Pan Global Equities. The plaintiffs who are directors of Pan Global Insurance are in the control of the company in that they are in possession directly or indirectly of the power to direct or cause the direction of the management and policy of the insurer. This is clearly provided in Article 123(1) of the articles of association of Pan Global Insurance. Article 123(1) states:

> The management of the business and the control of the company shall be vested in the directors, who, in addition to the powers and authorities by these articles expressly conferred upon them, may exercise, with full power of substitution and delegation, all such powers and do all such acts and things as the company is by its memorandum of association or otherwise authorised to exercise and do and are not hereby or by the ordinances expressly directed or required to be exercised or done by the company in general meeting, but subject nevertheless to the provisions of these articles, and to any regulations from time to time made by the company in general meeting; provided that no regulations shall invalidate any prior act of the directors which would have been valid if such regulations had not been made.

The EGM was a meeting of the shareholders of Pan Global Equities. The proposed resolutions to remove the plaintiffs as directors and to replace them with new directors did not affect the powers of the plaintiffs as directors of Pan Global Insurance. The plaintiffs who were directors of Pan Global Insurance before the EGM of Pan Global Equities are still directors and in control of Pan Global Insurance.

Although Pan Global Equities owns 99.92% of all the issued share capital in Pan Global Insurance, Pan Global Equities cannot interfere with the powers of the directors to control the affairs of Pan Global Insurance. Pan Global Equities cannot even impose its will upon the directors of Pan Global Insurance when the articles of association of the latter have confided to them the control of its affairs. See *Automatic Self-Cleansing Filter Syndicate Co. Ltd. v. Cunninghame* [1906] 2 Ch 34 See also *The Gramophone And Typewriter Limited v. Stanley* [1908] 2 KB 69. In the circumstances when the EGM was held on 5 September 1988 the control of the affairs of Pan Global Insurance by its directors was not affected, the question of s. 18A of the Insurance Act did not arise at all. Accordingly the averment of the

third plaintiff in the affidavit in support of the *ex-parte* application that "the removal of the plaintiffs and appointment of new directors would *prima facie* contravene s. 18A of the Act" is untenable.

Mr. Sri Ram submitted that in the present case, the Director General of Insurance had publicly taken the position that s. 18A applied. In para. 2.4 of his written submission dated 9 January 1989, he said that the Director-General of Insurance had already made public his decision, namely, that in his view there is a change as envisaged by s. 18A and that his prior approval for the appointment of the first to the eighth defendants on the board of Pan Global Equities was necessary. His submission on this point was based on the affidavit of the third plaintiff affirmed on 16 September 1988 and a newspaper report exhibited to that affidavit. In para. 4(i) of the affidavit the third plaintiff reiterated the view that the EGM was properly, validly and lawfully adjourned. He added that his view was fortified by the view expressed by Bank Negara that the appointment of directors to the board of Pan Global Equities without the approval of the Director-General of Insurance would be a violation of s. 18A of the Insurance Act. The view expressed by Bank Negara appeared in a report in *The Star* newspaper dated 8 September 1988. A photocopy of the newspaper cutting was exhibited to the affidavit. According to the third plaintiff, "Although the views expressed in the report are not binding on this Honourable Court, I respectfully state that it has persuasive weight and relevance." The newspaper report exhibited to the affidavit contains the following report:

> The battle for control of Pan Global Equities Bhd. took a surprising turn yesterday when Bank Negara said approval of the Director-General of Insurance (DGI) was needed for anyone to sit on the board of Pan Global Equities.
>
> The latest interpretation, from a Bank Negara spokesman was in response to an enquiry from *Business Star* on the controversy.
>
> Bank Negara is the authority that supervises the country's insurance industry.
>
> The Bank Negara Governor himself is the DGI.
>
> Yes, you need to seek written approval from DGI for the take over of control of the Pan Global Board because such action will indirectly cause a change in the control in Pan Global's insurance subsidiary (Global Insurance Sdn. Bhd.).
>
> Section 18A(1) and (2) of the Insurance Act therefore comes into play... 'the spokesman said...

From the newspaper report it is evident that the spokesman for Bank Negara was giving an opinion on the construction of s. 18A. He was also giving an opinion that a "take over" of control of the board of directors of Pan Global Equities constituted a change in the control in Pan Global Insurance. The opinion given by the spokeman is clearly an opinion on point of law.

In my opinion para. 4(i) of the said affidavit does not comply with O. 41 r. 5 of the Rules of the High Court 1980. The paragraph does not contain facts as the third plaintiff was able of his own knowledge to prove. The paragraph is therefore inadmissible for the purpose of the present proceeding. Similarly the opinion expressed in the newspaper cutting exhibited to the affidavit is inadmissible for the purpose of the present proceeding. See *Development & Commercial Bank Berhad v. Cheah Theam Swee*, Kuala Lumpur Civil Suit No. C2575 of 1984 (unreported). In *Gleeson v. J. Wippell & Co. Ltd.* [1977] 1 WLR 510.

> In Mr. Brown's affidavit he quoted a passage from an opinion of a silk, and he exhibits an article in a journal concerned with patents. The object appears to be to demonstrate that the plaintiff has prospects of success against Wippell if her action is not halted. The main objection to the extracts from the article is that they do not appear to me to constitute any evidence;

> and the purpose of affidavits is, or should be, to provide evidence. As I told Mr. Jacob, I would listen with pleasure to any submission upon the subject that he chose to put before me, whatever his source of inspiration, but I would not listen to the words of a Queen's Counsel, however eminent, or the author of an article, when proferred as evidence of the legal rights and prospects of a litigant. A Court does not hear expert evidence on what the law of England is, or Counsel's opinion are usually valueless, or worse, without the rest of the opinion and the instructions on which it was based, to show what the opinion was founded on and what reservations and qualifications there are.

I agree with the passage quoted above. Since both para. 4(i) of the affidavit and the newspaper report are inadmissible, I shall not take into consideration Counsel's arguments whenever reference was made to para. 4(i) and to the newspaper report.

Mr. Sri Ram, in his written submission stated that on the issue of control the lifting of the corporate veil was an absolute necessity because of the wording of s. 18A(2). He went on to state that indirect control could only be established if the corporate veil was lifted. In other words, lifting of the corporate veil was necessary to see whether there was indirect control. In support of his submission he cited *Bank Bumiputra Malaysia Bhd. & Anor. v. Lorrain Osman & Ors.* [1985] CLJ (Rep) 409 and the Supreme Court decision in *Aspatra Sdn. Bhd. & 21 Ors. v. Bank Bumiputra Malaysia Bhd. & Anor.* [1987] CLJ (Rep) 50.

With respect, I do no think the instant case is a proper case where the corporate veil should be lifted. In *Lorrain's* case there was a breach of fiduciary duty as director of Bank Bumiputra and as chairman of BMF. There was also allegation that Lorrain received secret profits. The Supreme Court said that:

> There was admittedly an element of fraud in the receipt of the secret profits whatever might be the capacity in which Lorrain had received them.

In the present case there is no evidence to justify the lifting of the corporate veil.

The next question to consider is whether it was proper for the other shareholders who remained behind after the third plaintiff had adjourned the meeting *sine die*, and continued with the business of the meeting including the removal of the plaintiffs and the appointment of the first to the fifth defendants as directors of Pan Global Equities. As stated earlier the third plaintiff as chairman of the meeting had acted contrary to Article 69 and contrary to principles of common law when he adjourned the meeting *sine die*. Since the meeting was wrongly adjourned it was proper for the meeting to resolve to go on with the business for which it had been convened and to appoint another chairman for that object. *National Dwelling Society v. Sykes supra*. In *John v. Rees supra* Megarry J in his judgment at p. 384 said:

> On the footing that there was no valid adjournment... the meeting remained in being and competent to transact business. The elections conducted after the departure of the plaintiff were accordingly valid...

In the present case when the meeting was continued, the fifth defendant was appointed chairman. There was a *quorum* and the minutes of the meeting were properly taken. The removal of the three plaintiffs as directors of Pan Global Equities and the appointment of the first to fifth defendants as new directors were made by passing the resolutions that were before the meeting. Thus the three plaintiffs are no longer directors of the Pan Global Equities and the new directors are the first, second, third, fourth and fifth defendants plus the sixth defendants who were duly appointed by the five new directors.

Having considered all the evidence and the circumstances of this case I have come to the conclusion that there is no serious question to be tried in this case. I accordingly order that (1) the *ex parte* order dated 7 September 1966 be set aside, (2) an enquiry as to damages which the first to the ninth defendants have sustained by reason of the *ex parte* order be held on a date to be fixed and that such damages be paid by the plaintiffs; and (3) the costs of this application be costs in the cause.

With regard to prayer 2 of the application i.e., asking the order of the Court for an injunction against the plaintiffs, I regret that Counsel for the defendants had not argued on this point although Mr. Sri Ram had briefly submitted on it. Since the Court did not have the benefit of arguments by Counsel I am unable to decide on the point. I therefore make no order on prayer 2.

Also found at [1990] 1 CLJ 71